STATE OF MICHIGAN

COURT OF APPEALS

DAVID J. NORD,

Plaintiff-Appellee,

v

ANASTASIA H. NORD,

Defendant-Appellant.

UNPUBLISHED
November 15, 2007

No. 278450
Kent Circuit Court
LC No. 05-002431-DM

Before: Murphy, P.J., and Smolenski and Meter, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's order modifying a previous custody order and awarding plaintiff sole physical custody of the parties' minor child. The parties continued to share joint legal custody. We affirm.

Defendant first argues that the trial court committed clear legal error when it ordered a custody review without making a preliminary finding of proper cause or a change of circumstances. Child custody orders and judgments "shall be affirmed on appeal unless the trial judge made findings of fact against the great weight of evidence or committed a palpable abuse of discretion or a clear legal error on a major issue." MCL 722.28.

Defendant's assertion that the trial court did not make the requisite preliminary finding is simply incorrect. A trial court is required to find, by a preponderance of the evidence, proper cause or a change of circumstances before it can reopen a custody matter. *Vodvarka v Grasmeyer*, 259 Mich App 499, 509; 675 NW2d 847 (2003). Upon review of the record of a hearing held on July 28, 2006, it is very clear that the trial court made the required initial finding, i.e., a change of circumstances and proper cause, necessary to revisit the prior custody order. Moreover, we agree with the trial court that the threshold inquiry was satisfied. The trial court followed the law, and no clear legal error occurred. See *Fletcher v Fletcher*, 447 Mich 871, 881; 526 NW2d 889 (1994).

Defendant next argues that the trial court erred by failing to, in its analysis of two best interest factors, MCL 722.23(c) and (g), "identify the manner in which the circumstances relied upon relate to the child's best interests," and failing to "identify the 'compelling circumstance' which it believed to have been established by clear and convincing evidence."

"To determine the best interests of children in custody cases, the trial court must consider the . . . factors of § 3 of the Child Custody Act" and "explicitly state its findings and conclusions with respect to each of these factors." *Bowers v Bowers*, 190 Mich App 51, 54-55; 475 NW2d 394 (1991). Here, the trial court determined that an established custodial environment existed with both parents. A modification of the established custodial environment, therefore, required clear and convincing evidence that the change was in the best interest of the child. MCL 722.27(1)(c); *Mason v Simmons*, 267 Mich App 188, 195; 704 NW2d 104 (2005). Thus, the trial court's decision had to be supported by a compelling reason to change custody. *Carson v Carson*, 156 Mich App 291, 301-302; 401 NW2d 632 (1986).

MCL 722.23(c) requires the trial court to consider "[t]he capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs." With respect to factor (c), the trial court found that plaintiff earned $50,000 per year and paid for the child's daycare. The trial court found that defendant was terminated from her job in November 2006 and had only recently gained employment. The trial court further found that defendant was in the process of moving, after being evicted. The trial court then concluded:

> This is a slight preference to the plaintiff, he's been the more consistent income and he has provided more of the food, clothing and medical care, at least since June of '06, actually July's order of '06 up until now and that was also the testimony of [the friend of the court evaluator].

MCL 722.23(g) instructs the trial court to consider "[t]he mental and physical health of the parties involved." With regard to factor (g), the trial court found that "defendant's mental state likely is going to be a problem for some time to come," even though she had "come a long way since the July incidences [sic]." The trial court concluded that the factor favored plaintiff because there were no mental health issues at all for plaintiff, just the defendant.

Although the trial court did not explicitly identify the specific manner in which its findings on factors (c) and (g) related to the child's best interests, the trial court need not necessarily engage in an elaborate or ornate discussion because brief, definite, and pertinent findings and conclusions regarding the contested matters are sufficient. MCR 2.517(A)(2); *Fletcher, supra* at 883. The trial court was required to make findings on each party's earning capacity and ability to provide food, clothing, medical and remedial care, and other material needs with respect to factor (c), and to make findings on the parties' mental health for factor (g). See MCL 722.23(c); MCL 722.23(g). The court did so, and it then concluded that there was a preference for plaintiff on both factors. The trial court's discussion of the evidence it cited to support its findings was quite extensive, and all of the evidence cited by the trial court was supported by testimony from the parties and the witnesses they proffered.

Furthermore, it is clear from the trial court's conclusions that it decided that plaintiff's consistent income, his demonstrated ability to provide food, clothing, and medical care, and his stable mental health, furthered the child's best interests. From the record, we discern that defendant has struggled to maintain consistency in her life, particularly in regard to her income and living situation. It was also well documented that defendant had serious mental health issues, including a recent suicide attempt and ongoing therapy. Placing the child in plaintiff's sole custody would cause more than a "marginal improvement" in her life because the child will

continue to benefit from plaintiff's consistent income, ability to provide, and stable mental health on a daily basis. See *Carson, supra* at 301-302. While the trial court found that only three of the statutory best-interest factors favored plaintiff, with the parties otherwise being equal, there is to be no rigid application of a mathematical formula that near equality with regard to the statutory factors precludes a court from finding clear and convincing evidence to change custody. *Sinicropi v Mazurek*, 273 Mich App 149, 184; 729 NW2d 256 (2006). We hold that the trial court did not err in finding that there was clear and convincing evidence that a change in custody was in the child's best interest. See MCL 722.27(1)(c); *Mason, supra* at 195.[1]

Defendant also argues that the trial court erred by not considering the sibling bond between the child and her half-brother in rendering its custody decision. The trial court was not required to consider the sibling bond; rather, it is a consideration that the trial court may take into account when evaluating the best interests of the child. See *Wiechmann v Wiechmann*, 212 Mich App 436, 439-440; 538 NW2d 57 (1995). And, we note that other than stating that the child has lived with her half-brother her entire life, defendant fails to allege any facts to support that the siblings were bonded and should not be separated. Additionally, because defendant was granted parenting time, the two children will keep in regular contact.

Finally, we note that plaintiff alleges two errors in his brief that do not correspond to issues raised by defendant on appeal. We decline to address plaintiff's extraneous arguments because resolution of the issues is unnecessary based on our conclusions.

Affirmed.

/s/ William B. Murphy
/s/ Michael R. Smolenski
/s/ Patrick M. Meter

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[1] Defendant argues that the change to sole custody from joint custody, coupled with her award of parenting time, essentially resulted in a change of only a few days of parenting time between the parties, and that fact shows that she must have been viewed as an acceptable parent by the court. Thus, according to defendant, there necessarily did not exist a compelling reason to change custody in the first place. Defendant, however, does not cite any authority for the proposition that, if a court would be willing to grant parenting time to a parent whose prior established custodial rights are being challenged, the court cannot change custody as sought. The existence of compelling or clear and convincing evidence that supports a change in a child's established custodial environment does not mean that the parent losing custody is unworthy of being awarded some parenting time.